



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Date: July 29, 2004

Cheryl Lillienthal, Debbie L. Lohmeyer,
Julene A. Mrzywka, Theodore R. Herrera
and Debbie Glassberg

Serial No. : 10/698,912

Our Docket No.: MAT 3I8

Filed : October 31, 2003

For : FOOD FORMULATIONS

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

Sir:

PETITION UNDER 37 C.F.R. § 1.47(a)

Mattel, Inc., asserted assignee of the present invention, respectfully requests that the subject application be accorded status under 37 C.F.R. § 1.47(a) because one of the co-inventors, namely Cheryl Lillienthal, refuses to join in the application.

The attached Declaration of Anton E. Skaugset sets out the pertinent facts supporting the conclusion that Ms. Lillienthal refuses to join in the application. In particular, applicants respectfully submit the Ms. Lillienthal's conduct constitutes an express oral refusal, as contemplated in MPEP § 409.03(d).

In particular the attached Declaration of Anton E. Skaugset shows the following:

- 1) Ms. Lillienthal was presented with a letter enclosing the application papers

comprising the specification as filed, including the claims, an Inventor's Declaration, and as Assignment to Mattel, Inc. This letter was received at Ms. Lillienthal's home at 11:23 am on April 1, 2004.

2) Although Ms. Lillienthal acknowledged receipt of the letter, she did not review and sign the application papers, as requested by the above letter.

3) In a telephone call on June 21, 2004 to applicants' attorneys, Ms. Lillienthal orally refused to sign the application documents.

Applicants respectfully submit that these and other facts in the enclosed Declaration of Anton E. Skaugset support the conclusion that Ms. Lillienthal's refusal to respond to the letter enclosing the application papers, and her statements in the telephone call of June 21, 2004, amount to an express oral refusal to join in the application, as contemplated in MPEP § 409.03(d).

The last known address of inventor Cheryl Lillienthal, as of June 21, 2004, is 4627 Danza Street, Woodland Hills, California 91364. The last known phone number for Ms. Lillienthal is (818) 884-9256.

The current addresses of joint inventors, Debbie L. Lohmeyer, Julene A. Mrzywka, Theodore R. Herrera and Debbie Glassberg are provided on the Declaration filed herewith.

Mattel, Inc. respectfully notes that the Declaration was signed by all available joint inventors, namely Debbie L. Lohmeyer, Julene A. Mrzywka, Theodore R. Herrera and Debbie Glassberg, with the signature block of the non-signing inventor Cheryl Lillienthal left blank. Mattel, Inc. therefore respectfully requests that the Declaration be treated as

having been signed by all the available joint inventors on behalf of the non-signing joint inventor, as provided in M.P.E.P. § 409.03.

Mattel, Inc. therefore respectfully requests that the application be allowed to proceed without the signature of inventor Cheryl Lillienthal. Such action is necessary to preserve the rights of the assignee, Mattel, Inc. because failure to proceed could permit an intervening third party to establish an earlier filing date.

CERTIFICATE OF MAILING

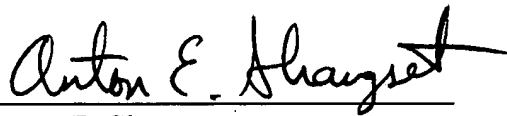
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on July 29, 2004.



Suzanne Werner

Date of Signature: July 29, 2004

Respectfully submitted,
KOLISCH HARTWELL, P.C.



Anton E. Skaugset
Customer No. 23581
Registration No. 38, 617
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520 S.W. Yamhill Street, Suite 200
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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

Sir:

DECLARATION

I, Anton E. Skaugset, of the city of Beaverton, Oregon, make oath and say:

1. On information and belief, attached as Exhibit A is a true copy of a letter dated March 31, 2004, that was mailed to co-inventor Cheryl Lillienthal. On information and belief, this letter to Ms. Lillienthal enclosed the following:

a) A copy of the specification, including the claims, as filed, of U.S. Patent Application Serial No. 10/698,912, which claims priority from U.S. Provisional Patent Application 60/422,936;

b) An inventor's Declaration; and

c) An Assignment.

On information and belief, this letter was forwarded to Ms. Lillienthal via FedEx Tracking Number 8358 0387 5111 on March 31, 2004, and requested her to review the specification and to execute the Declaration and Assignment documents. For conciseness of this Declaration, only the cover page of the specification as filed is attached hereto, although it is believed that the entire specification was enclosed with the actual letter sent to Ms. Lillienthal.

2. A copy of a FedEx USA AirBill with Tracking Number 8358 0387 5111, is attached hereto as Exhibit B.

3. A copy of a FedEx Express Shipment Detail by Payor Type, showing that the letter sent with Tracking Number 8358 0387 5111 was delivered to Ms. Cheryl Lillienthal on April 1, 2004, at 11:23 am, is attached hereto as Exhibit C.

4. On April 20, 2004, I telephoned Ms. Lillienthal and asked if she had reviewed and executed the application papers. She indicated that she had not, and did not indicate when she would be able to execute the application papers. Ms. Lillienthal expressed reluctance to execute the Assignment document, as it specified an obligation to assist Assignee Mattel, Inc. in prosecuting the patent application.

5. On May 26, 2004, at my direction Suzanne Werner, a legal assistant at Kolisch Hartwell, P.C., telephoned Ms. Lillienthal and asked her if she intended returning the application papers. It was reported to me by Ms. Werner that Ms. Lillienthal indicated that she was very busy, but would try to read through the paperwork and return the documents.

6. On June 11, 2004, at my direction Ms. Werner left a voicemail message with Ms. Lillienthal requesting her to call Ms. Werner regarding the application papers. It was reported to me that Ms. Werner did not receive a return call from Ms. Lillienthal.

7. On June 18, 2004, at my direction Ms. Werner telephoned Ms. Lillienthal again, and left another message advising her that if she did not contact her regarding the application document by June 22, 2004, the joint inventors would move to exclude her from the prosecution of the patent application.

8. On June 21, 2004, it was reported to me that in a telephone call to Ms. Werner, Ms. Lillienthal indicated that she did not wish to be included in the prosecution of the patent application, did not wish to execute an Assignment to Mattel, Inc. and would not sign the application papers.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

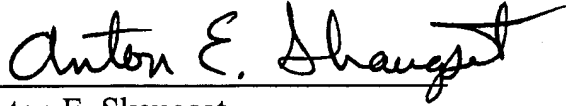
CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on July 29, 2004.

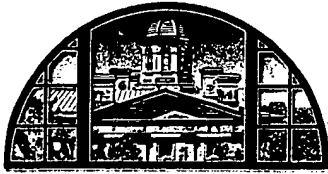

Suzanne Werner

Date of Signature: July 29, 2004

Respectfully submitted,
KOLISCH HARTWELL, P.C.



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Kolisch Hartwell

A Professional Corporation

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- *OR, CA & ID Bars
- *OR, CA & WA Bars
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March 31, 2004

VIA FEDEX

Ms. Cheryl Lillienthal
4627 Danza Street
Woodland Hills, California 91364

RE: U.S. Patent Application Serial No. 10/698,912 of Debbie Glassberg,
Cheryl Lillienthal, Debbie L. Lohmeyer, Julene A. Mrzywka and
Theodore R. Herrera for FOOD FORMULATIONS
Our File – MAT 318

Dear Cheryl:

As I indicated in our earlier telephone conversation, you were named as a co-inventor in the above patent application filed on behalf of Mattel, Inc. The application was filed on October 31, 2003, and is intended to protect selected aspects of the BARBIE KITCHEN Food Formulas.

At this time, in order to complete the patent application process, we must submit an inventor's Declaration executed by each named inventor. We ask that you please review the enclosed patent application, including the claims, and sign the enclosed Declaration. The Declaration verifies that you have read the application, that you are a joint inventor of the claimed subject matter, and that you have a duty to disclose information material to patentability.

At the same time, we ask that you please also sign the attached Assignment document. The Assignment serves to formally record the transfer of your rights in the patent application to Mattel, Inc. Please have your signature on the Assignment witnessed, and have your witness also sign the Assignment where indicated. Your signature on the Assignment does not need to be notarized, only witnessed.

Ms. Cheryl Lillienthal
March 31, 2004
Our File – MAT 318
Page 2

Once the Declaration and Assignment are executed, please return the executed documents to me in the enclosed envelope.

As the patent application may include trade secret or other confidential information, we also ask that you please return or destroy your copy of the patent application after you have executed the enclosed paperwork.

Your assistance in this matter is greatly appreciated. If you have any questions or concerns at all, please don't hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anton E. Skaugset".

Anton E. Skaugset
e-mail: anton@khpatent.com

AES:pak
Enclosures

FOOD FORMULATIONS

[0001] This application is based upon and claims benefit under 35 U.S.C. § 119(e) of U.S. provisional patent application Serial No. 60/422,936, filed November 1, 2002.

Technical Field

[0002] The invention relates generally to food product formulations, and more particularly to food products prepared by the addition of water to a formulation.

Background

[0003] Young children particularly enjoy play that models adult activity. Such play behavior may include driving toy vehicles, using toy tools, and cooking activity. Such play behavior must generally be carefully monitored to prevent injury and render the play relatively uncomplicated, particularly for younger children. For example, although power tools used in such play may be designed to resemble a drill, a saw, etc., they are carefully designed to have no sharp edges, and no moving parts that can pinch skin, pull hair, or otherwise injure a child.

[0004] Cooking toys for older children may include actual food, and may even include cooking with heat. Toys for younger children, on the other hand, are typically limited to simulating food preparation or kitchen activities with artificial (and inedible) foods in order to minimize the potential for injury and mess. However, even the youngest child understands that pretending to prepare plastic food leaves something to be desired, when compared to preparing something that may be eaten. It would be desirable to have formulations that permit even young children to prepare edible foodstuffs, quickly and easily, and that require minimal equipment and cooking skills.

USA Airbill

FedEx
Tracking
Number

8358 0387 5111

Please print and press hard.

Date 3/31/04

Sender's FedEx
Account Number

0972-1147-7

Sender's Name Anton Skaugset, Ph.D.

Phone (503) 224-6655

Company KOLISCH HARTWELL DICKINSON

Address 520 SW YAMHILL ST STE 200

Dept./Floor/Suite/Room

City PORTLAND

State OR

ZIP 97204

2 Your Internal Billing Reference

MAT 318

OPTIONAL

CA

3 To

Recipient's Name Ms. Cheryl Lillienthal

Phone ()

Company

Address 4627 Danza Street

To "HOLD" at FedEx location, print FedEx address.

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address

Dept./Floor/Suite/Room

City Woodland Hills

State CA

ZIP 91364

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Senders Copy

4a Express Package Service

☒ FedEx Priority Overnight
Next business morning

☐ FedEx Standard Overnight
Next business afternoon

Packages up to 150 lbs.
Delivery commitment may be later in some areas.
☐ FedEx First Overnight
Earliest next business morning
delivery to select locations

☐ FedEx 2Day
Second business day

☐ FedEx Express Saver
Third business day

FedEx Envelope rate not available. Minimum charge: One-pound rate

4b Express Freight Service

☐ FedEx 1Day Freight*
Next business day

☐ FedEx 2Day Freight
Second business day

Packages over 150 lbs.
Delivery commitment may be later in some areas.
☐ FedEx 3Day Freight
Third business day

* Call for Confirmation.

5 Packaging

☒ FedEx Envelope*

☐ FedEx Pak*
Includes FedEx Smart Pak, FedEx Large Pak, and FedEx Sturdy Pak

☐ Other

* Declared value limit \$500

6 Special Handling

☐ SATURDAY Delivery
Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select ZIP codes

☐ HOLD Weekday
at FedEx Location
NOT Available for
FedEx First Overnight

☐ HOLD Saturday
at FedEx Location
Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations

Does this shipment contain dangerous goods?

☒ No ☐ Yes
As per attached
Shipper's Declaration

☐ Yes
Shipper's Declaration
not required

☐ Dry Ice
Dry Ice, 9 UN 1845 x _____ kg

Dangerous Goods (including Dry Ice) cannot be shipped in FedEx packaging.

☐ Cargo Aircraft Only

7 Payment Bill to:

☒ Sender
Acct. No. in Section
1 will be billed.

☐ Recipient

☐ Third Party

☐ Credit Card

☐ Cash/Check

FedEx Acct. No.
Credit Card No.

Exp.
Date

Total Packages

Total Weight

Total Declared Value†

1

\$ 100.00

†Our liability is limited to \$100 unless you declare a higher value. See back for details.

FedEx Use Only

8 Release Signature

Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

447

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Invoice

Invoice Date

Account Number

Page:

FedEx Express Shipment Detail By Payor Type (Original)**Dropped off: Mar 31, 2004****Payor: Shipper****Reference: VSA 605** ✓

- Fuel Surcharge - FedEx has applied a fuel surcharge of 6.50% to this shipment.
- Distance Based Pricing, Zone 7
- FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

InternetShip		Sender		Recipient
Tracking ID	791808452862	ANITA R. TABAYOYON		DAVID TANK, ESQ.
Service Type	FedEx Priority Overnight	KOLISCH HARTWELL PC		DAVIS, BROWN, KOEHN, SHORS & R
Package Type	FedEx Pak	520 SW YAMHILL ST STE 200		2500 FINANCIAL CENTER
Zone	7	PORTLAND OR 97204-1324 US		DES MOINES IA 50309-3993 US
Packages	1			
Weight	3.0 lbs, 1.4 kgs			
Delivered	Apr 01, 2004 09:11	Transportation Charge		34.25
Svc Area	A1	Discount		-4.45
Signed by	T.WATERS	Declared Value Charge		0.00
Dec. Value	USD 100.00	Fuel Surcharge		1.94
FedEx Use	543420350/01596/	Total Charge		USD \$ 31.74

OK ✓

Dropped off: Mar 31, 2004**Payor: Shipper****Reference: MAT 318** ✓

- Fuel Surcharge - FedEx has applied a fuel surcharge of 6.50% to this shipment.
- Distance Based Pricing, Zone 5

Tracking ID	835803875111	Sender		Recipient
Service Type	FedEx Priority Overnight	ANTON SKAUGAET PH D		MS CHERYL LILLIENTHAL
Package Type	FedEx Envelope	KOLISCH HARTWELL PC		4627 DANZA ST
Zone	5	520 SW YAMHILL ST STE 200		WOODLAND HILLS CA 91364 US
Packages	1	PORTLAND OR 97204-1324 US		
Weight	N/A			
Delivered	Apr 01, 2004 11:23	Transportation Charge		16.75
Svc Area	A2	Discount		-3.35
Signed by	L.SCOTT	Declared Value Charge		0.00
Dec. Value	USD 100.00	Fuel Surcharge		0.87
FedEx Use	091184900/00219/	Total Charge		USD \$ 14.27

CA ✓

Dropped off: Apr 02, 2004**Payor: Shipper****Reference: OIE 602** ✓

- Fuel Surcharge - FedEx has applied a fuel surcharge of 6.50% to this shipment.
- Distance Based Pricing, Zone 4
- 1st attempt Apr 05, 2004 at 10:10 AM.
- A future delivery was requested.

Tracking ID	835803875122	Sender		Recipient
Service Type	FedEx Priority Overnight	JOHN M MCCORMACK		CLERK
Package Type	FedEx Envelope	KOLISCH HARTWELL PC		U S DIST COURT FOR THE NORTHER
Zone	4	520 SW YAMHILL ST STE 200		280 S FIRST STREET ROOM 2112
Packages	1	PORTLAND OR 97204-1324 US		SAN JOSE CA 95113 US
Weight	N/A			
Delivered	Apr 05, 2004 11:42	Transportation Charge		15.95
Svc Area	AA	Discount		-3.19
Signed by	B.WALTON	Declared Value Charge		0.00
Dec. Value	USD 25.00	Fuel Surcharge		0.83
FedEx Use	093144700/00208/	Total Charge		USD \$ 13.59

OK ✓